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Sent: Monday, February 28, 2011 3:13 PM
To: Isenberg, Phil@DeltaCouncil; fmarcus@nrdc.org; Martin, Elaine@DeltaCouncil
Subject: Breif comment on first staff draft -- for public posting

Here are some immediate comments on your draft of 14 Feb 11:

3-4. Definitions, which omit reliability. Please make clear that reliability means determining a level and schedule of water extractions that is sustainable during multiple dry years. (Compare that language in SBs 901, 601, 221.) It does NOT mean increasing exports from the Delta. Too many critics are saying that the latter is what you all and the Legislature really mean. Prove them wrong, and please do it now so we can get on to the merits.

5-3. "the constitutional public trust doctrine." In every other place you got it right, as the Legislature ultimately did in 2009: reasonable and beneficial use is in the Constitution; public trust (except as to submerged lands, NOT water) is not. But here on 5-3 the quoted portion emerged uncorrected.

5-4. per capita water use in urban areas essentially the same for 40 years. How does one define "urban areas"? Perhaps a more encouraging mark is that LA now uses less than in 1977, when we got the Inyo injunction, than now with 30 percent more people. The heading "urban residential water use not declined for past 40 years" perhaps unfair or at least sufficiently unspecific. Need to distinguish areas where per capita use has declined from those where not.

5-5. storage downstream of the Delta. Good idea. How about starting with State reassertion of its interest in Kern Water Bank? In the PCL settlement discussions and comment on the latest DWR EIR, still like the underlying decision under challenge in Sacto Superior Court, we proposed a true public JPA: half State half local to ensure that the bank fulfilled its original goal of serving both statewide and local needs -- not as at present serving the profit of Paramount Farms.

Related, how about recommending DWR declare the SWP in permanent shortage, with percent of shortage reflecting the reliability that will result from your ultimate recommendations spelled out -- not 4.2 mafa, certainly.

Respectfully,

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